IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 512 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDABEN RAMSUKHBHAI ODA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 512 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

RULE SERVED for Respondent No. 1

Ms Mita Panchal, A.GP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

sThe petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 29/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three prohibition offence was registered against him before Eastern Division Prohibition Police Station at C.R.No.5197, 5211 and 5298 of 2003 on 27.6.2003, 21.7.2003 and 17.10.2003 for an offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. The petitioner has challenged the said order of detention on several grounds. It has been contended here that simply because three offences have been registered, it could not be said that there was a threat to public order. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate for the petitioner argued that three prohibition offences have been registered against the petitioner and simply because those offences have been registered against the petitioner, it cannot be said that the petitioner's activities were likely to cause a threat to public order and in support of the said argument, learned Advocate for the petitioner has relied upon a decision of the Apex Court in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City & Anr. reported in AIR 1989 SC 491. It would be worthwhile to refer to the observations made in paras 17 and 18 of the said decision as follows:

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public

disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The

order of detention cannot, therefore, be upheld."

7. In view of the aforesaid pronouncement of the Hon'ble Supreme Court, it would be difficult to accept that simply because a solitary prohibition offence has been registered, the petitioner could be treated to be a bootlegger and his activities would lead to a threat to public order. Even otherwise, by holding the petitioner to be a bootlegger, then also the petitioner is required to be found to be a habitual offender. In the present case, we find that the petitioner has one prohibition offence at his credit. In that view of the matter it would be difficult to accept that the petitioner was a habitual offender.

8. In the present case also the detention order has been passed on registration of three prohibition offences and, therefore, applying to the above principles on the facts of the case on hand, it is clear that the order of detention cannot be sustained in the eye of law on mere registration of three prohibition offences. Therefore, the order of detention is required to be held to be illegal and it is required to be quashed and set aside.

9. For the foregoing reasons, this petition is allowed. The impugned order dated 29.11.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp